



July 27, 2001

Mr. Jim D. McLeroy
McLeroy, Litzler, Rutherford Bauer & Friday, P.C.
Attorneys at Law
P.O. Box 657
Sulphur Springs, Texas 75483

OR2001-3263

Dear Mr. McLeroy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149946.

The City of Commerce (the "city"), which you represent, received a request for copies of all arrest records created by the city between May 7, 2000 and May 7, 2001. We have reviewed the submitted representative sample documents.¹

We note at the outset that you failed to comply with the procedural requirements of section 552.301 of the Government Code. In accordance with section 552.301, a governmental body that seeks a decision from this office must state within ten business days which exceptions apply to the requested information. *See* Gov't Code § 552.301(a). In addition, a governmental body must submit to this office, within fifteen business days of receiving the request, written comments explaining how the stated exceptions apply to the submitted information. *See* Gov't Code § 552.301(e). In this instance, you failed to state which exceptions to disclosure apply and to submit written comments.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information that overcomes this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); *see also* Open Records Decision No. 319 (1982). A demonstration that the requested information is deemed confidential by law or implicates a third party's interest is a compelling interest sufficient to negate this presumption. *See* Open Records Decision No. 150 (1977). We have reviewed the representative sample of documents to determine whether they contain information that is confidential by law.

We note that many of the submitted arrest records contain social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).² *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that the social security numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, you should ensure that the numbers were not obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

We also note that most of the submitted arrest records contain Texas motor vehicle information. Section 552.130 of the Government Code excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. We have marked a representative sample of the Texas drivers' license, license plate, and vehicle identification numbers that must be withheld from disclosure pursuant to section 552.130 of the Government Code.

In summary, the social security numbers contained within the submitted information may be confidential pursuant to federal law. You must withhold from disclosure all information reflective of the marked representative sample of Texas drivers' license, license plate, and

² Section 552.101 of the Government Code excepts information from disclosure if it is information considered to be confidential by law either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

vehicle identification numbers pursuant to section 552.130 of the Government Code. You must release all other requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a). _

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

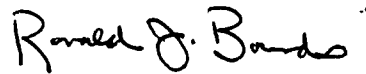
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized "R" and "B".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref.: ID# 149946

Enc.: Marked documents

cc: Mr. John W. Nash
1004 Park Street #1
Commerce, Texas 75428
(w/o enclosures)